

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-080043
	:	TRIAL NO. B-0704080
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
	:	
GREG KALEJS,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant, Greg Kalejs, appeals the judgment of the Hamilton County Court of Common Pleas convicting him of two counts of robbery. He was convicted after a bench trial.

One night, Kenneth Schulte and Chad Anderson went to a bar with several friends. Schulte testified that, as they were walking back to their car, a person later identified as Jeremy Korte had hit him from behind and demanded money. At the same time, he saw Anderson accosted by a man later identified as Kalejs. Schulte testified that he had given Korte his wallet.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Anderson testified that either Korte or Kalejs had choked him while demanding money, but he was not certain which of the men had done so. Anderson was able to break free from his assailant without relinquishing his money. One of Anderson's companions, Shane Pollard, testified that he had seen Kalejs chasing Anderson.

Schulte told a police officer in front of the bar that a robbery had occurred. Within minutes, the police had arrested Kalejs and Korte. Schulte and Pollard were taken to the scene of the arrest, where they identified Kalejs and Korte as the assailants. The police recovered Schulte's wallet from Korte.

Korte testified that he had gotten into an argument with Schulte, Anderson, and their companions at the bar. He stated that, after he had left the bar, Schulte and Anderson had attacked him and Kalejs. Korte testified that Schulte had dropped his wallet, but he could not explain why he had taken it.

Other defense witnesses testified about the argument in the bar, but they were unaware of any of the events that had occurred after Kalejs and Korte had left. Kalejs did not testify.

The court found Kalejs guilty and sentenced him to two concurrent three-year terms of imprisonment.

In his first two assignments of error, Kalejs now contends that the convictions were based on insufficient evidence and were against the manifest weight of the evidence. We address the assignments together.

In the review of the sufficiency of the evidence to support a conviction, the relevant inquiry for the appellate court "is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the

essential elements of the crime beyond a reasonable doubt.”² To reverse a conviction on the manifest weight of the evidence, a reviewing court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and conclude that, in resolving the conflicts in the evidence, the trier of fact clearly lost its way and created a manifest miscarriage of justice.³

The robbery statute, R.C. 2911.02(A)(2), provides that “[n]o person, in attempting or committing a theft offense * * * shall * * * [i]nflict, attempt to inflict, or threaten to inflict physical harm on another.”

In this case, the convictions were in accordance with the evidence. The testimony indicated that Kalejs had assaulted Anderson while demanding money, and there was ample evidence that he and Korte had acted in concert in robbing the two victims. Although Korte insisted that he and Kalejs had been the victims of an assault stemming from an argument in the bar, it was within the trial court’s discretion to reject that testimony. We overrule the first and second assignments of error.

In the third and final assignment of error, Kalejs argues that the trial court erred in admitting evidence of the pretrial identification because the identification procedure had been unduly suggestive.

Kalejs did not file a motion to suppress the identification and therefore has waived any argument concerning unfair suggestiveness.⁴ And in any event, Kalejs has failed to demonstrate that the identification was unreliable.⁵ We overrule the third assignment of error and affirm the judgment of the trial court.

² *State v. Waddy* (1992), 63 Ohio St.3d 424, 430, 588 N.E.2d 819.

³ *State v. Thompson*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

⁴ Crim.R. 12(C)(3).

⁵ See *Manson v. Brathwaite* (1977), 432 U.S. 98, 114, 97 S.Ct. 2243.

OHIO FIRST DISTRICT COURT OF APPEALS

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27.

HILDEBRANDT, P.J., PAINTER and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on October 8, 2008
per order of the Court _____.
Presiding Judge